

### **REMARKS**

This paper is presented in response to the Office Action. By this paper, claim 16 is canceled, claim 11 is amended and new claim 34 is added. Claims 1, 2, 12-14, 18-24, and 26-29 were canceled in previous papers. Claims 3-11, 15, 17, 25, and 30-34 are now pending in view of the aforementioned cancellation.

Reconsideration of the application is respectfully requested in view of the aforementioned amendments to the claims and the following remarks. For the convenience and reference of the Examiner, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

#### **I. General Considerations**

Applicant notes that the remarks, or lack of remarks, set forth herein are not intended to constitute, and should not be construed as an acquiescence, on the part of the Applicant: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicant reserves the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

#### **II. Rejection of Claim 17 under 35 U.S.C. § 102**

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP § 2131*.

The Examiner has rejected claim 17 under 35 U.S.C. § 102(b) as being anticipated by French Patent No. 2699326 to Christine ("Christine"). Applicant respectfully disagrees.

Applicant notes that *Christine* is a French patent written in the French language. With respect to such foreign language documents, Applicant notes that "If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection." *MPEP § 706.02(II). Emphasis added.* While it appears that the Examiner has attempted to comply with this requirement, Applicant respectfully submits the translation provided in connection with the Office Action falls short of fulfilling the intent of the aforementioned examination guidelines.

Specifically, the translated text provided by the Examiner consists of a single run-on paragraph that is four pages long. The translated text contains a large number of grammatical and syntactical errors

that make reading and understanding the text difficult. Not surprisingly, the Alta Vista – Babel Fish text translation utility that was used to produce the translation warns users that : “Expect Babel Fish to allow you to grasp the general intent of the original, not to produce a polished translation.” See [http://www.altavista.com/help/babelfish/babel\\_help](http://www.altavista.com/help/babelfish/babel_help). *Emphasis added.* A true and correct copy of this warning is submitted herewith. Applicant respectfully submits that such a generalized translation clearly cannot, and should not, be relied upon in an attempt to make the record “clear as to the precise facts the examiner is relying upon in support of the rejection.” *Id.*

The use of the *Christine* translation as a basis for the rejection of claim 17 is problematic for other reasons as well. By way of example, in the rejection of claim 17, the Examiner has alleged that *Christine* discloses the recited limitations at “Page 1, lines 6-21” and “Page 5, lines 8-22.” However, it is unclear whether the sections cited by the Examiner refer to the original French version or to the translated English version of *Christine*. In this regard, Applicant notes that the English translation includes five pages, namely, a four page specification and a fifth page that includes six claims. While the Examiner has referred to “Page 5” in the rejection, Applicant notes that page 5 of the translation concerns an apparatus claim, while claim 17 is a method claim. Thus, inasmuch as the claims on page 5 of the translation do not recite any methods or processes, it would appear that the Examiner may be citing not to page 5 of the translation, but to page 5 of the original French version of *Christine*, although Applicant is not clear on this point.

If, in fact, the Examiner is referring to page 5 of the original French, Applicant is at a loss to respond to the rejection, since the correlation between the line and page numbers of the French text with the pages of the translation is not apparent. Thus, Applicant is left to guess at which portion of the *Christine* translation purportedly provides the basis for the rejection. This much Applicant also respectfully declines to do, at least because it is the Examiner who bears the burden of establishing anticipation. On the other hand, if the Examiner is referring to “Page 5, lines 8-22” of the translation, the cited passage provides no support for the rejection of method claim 17 since, as noted above, page 5 of the translation is concerned with a series of apparatus claims that recite no method steps, acts or processes.

Because the English translation of *Christine* provided by the Examiner does not comport with the standards for translations set forth in the examination guidelines, and because the Examiner does not appear, in any event, to have specifically identified what portion(s) of the English translation of *Christine* the Examiner believes to correspond to the elements of the claimed invention, Applicant respectfully submits that the Examiner has not established that the identical invention is shown in *Christine* in as complete detail as is contained in claim 17.

In light of the foregoing, Applicant respectfully submits that the Examiner has failed to establish that *Christine* anticipates claim 17, and Applicant thus further submits that the rejection of claim 17 should be withdrawn.

### **III. Rejection of Claim 11 and 33 under 35 U.S.C. § 103**

Applicant respectfully notes at the outset that in order to establish a *prima facie* case of obviousness, it is the burden of the Examiner to demonstrate that three criteria are met: first, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP § 2143*.

The Examiner has rejected claims 11 and 33 under 35 U.S.C. § 103(a) as being unpatentable over *Christine* in view of U.S. Patent No. 5,623,530 to Lu (“*Lu*”). Applicant respectfully disagrees but submits that in light of the amendment herein to claim 11, the rejection is moot.

Particularly, claim 11 has been amended to delete the recitation of “... a helically wound wire whose pitch varies along a longitudinal axis defined by the filament, the variances in pitch being substantially symmetrically arranged with respect to a predetermined location on the longitudinal axis ...” Inasmuch as the Examiner has not established that the cited references teach or suggest the subject matter to which amended claim 11 is directed, Applicant submits that the rejection of claims 11 and 33 should be withdrawn.

### **IV. Allowable Subject Matter**

Applicant acknowledges with thanks the indication of the Examiner that claims 3-10, 25, and 30-32 are allowed, and Applicant also wishes to thank the Examiner for the careful review of those claims.

The Examiner has indicated that claims 15 and 16 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In light of the discussion and claim amendment presented herein, Applicant respectfully declines to amend claims 15 and 16 at this time.

Applicant submits the following comments concerning the Examiner’s statements of reasons for the indication of allowable subject matter in the Office Action. In general, Applicant agrees with the Examiner that the inventions to which claims 3-10, 15, 16, 25, and 30-32 are respectively directed are patentable over the cited references, but respectfully disagrees with the Examiner’s statement of reasons for allowance as set forth in the Office Action.

Particularly, Applicant submits that it is improper to characterize a single limitation, or subset of limitations, as constituting the basis for allowance of a claim. Rather, the patentability of a claim is properly determined with reference to the claim as a whole. Accordingly, Applicant does not concede that the reasons for allowable subject matter given by the Examiner are the only reasons that make, or would make, the claim allowable and Applicant does not make any admission or concession concerning the Examiner's statements in the Office Action concerning the allowability of claims 3-10, 15, 16, 25, and 30-32 in view of the cited references.

V. **New Dependent Claim 34**

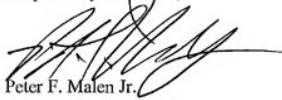
By this paper, Applicant has added new dependent claim 34. Inasmuch as new claim 34 depends from claim 25, indicated by the Examiner to be in allowable condition, Applicant respectfully submits that claim 34 is likewise in allowable condition.

**CONCLUSION**

In view of the remarks submitted herein, Applicant respectfully submits that each of the pending claims 3-11, 15, 17, 25, and 30-34 in this application is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 7<sup>th</sup> day of August, 2006.

Respectfully submitted,



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